

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

2006 APR 11 P 4:19

SHARON LEA MANNING WAID,

Plaintiff,

VS.

CASE NO. 2:06-cv-171-MEF

BUDGET RENTAL CAR, Inc. et. al.

Defendants.

**PLAINTIFF'S BRIEF AND DOCUMENTS IN SUPPORT OF OBJECTION TO
UNITED STATES' MOTION TO DISMISS**

This cause begin with the filing of a Notice of Removal by the United States of America of the Plaintiff's Civil Lawsuit for personal injuries filed on August 26, 2003, in the Circuit Court of Montgomery County, Alabama on February 24, 2006. This removal Motion was based on the averments by the government in accordance of 28 U. S. C. Section 1446 (d) of Defendant, Regina V. Freeman, being a member of the United States Air Force and acting in the line and scope of her duties at the time that the Plaintiff averred that Defendant Freeman negligently drove her car into the back of the Plaintiff car in Montgomery, Alabama proximately causing the Plaintiff to suffer both grievous personal injuries and damages to her car.

Subsequently based on the averment that the Plaintiff filed a form 95 claim against the United States Air Force on the same date the government filed a Motion to Dismiss based on lack of subject matter jurisdiction and lack of service on the Defendant Freeman. There is a second Defendant in this matter based on a Count 11 averment in the Complaint that the Plaintiff filed against Budget Rent A Car, Inc. which is a negligent entrustment claim and which the government although not alleging any representation per

se of Budget Rent A Car, Inc. is attempting to have dismissed. Since the state Statue of Limitation has run on this matter on August 26, 2005, said dismissal without representation and subject matter jurisdiction would be highly prejudicial and fatal to that claim by the Plaintiff. It should be stated that service was perfected on Defendant; Budget Rent A Car, Inc. on September 2, 2005.

The Plaintiff submits that the issues herewith are whether the State Court action that is now the Federal Court Civil action should be dismissed for this Court's lack of subject matter jurisdiction due to the filing of the form 95 claim at the same time as the State Court action on August 24, 2005. Secondly, the government asserts the issue of failure to have service on Defendant Freeman in applicable ruling with the Rules of Federal Procedure.

The Plaintiff submits that she has a state Law right to file an action against a personal for negligently injuring her and against a business entity for negligently breaching its duties and entrusting a vehicle to an unsafe driver who subsequently injures her by her own personal actions. The same is asserted by the Plaintiff for her negligent entrustment action against Defendant Budget Rent A. Car, Inc.

In **Gutierrez de Martinez vs. Lamagno**, 515 U. S. 417, our Supreme Court gave guidelines as to the application of the "Westfall Act" which is the playing field in the instance case. ""Second, when a government official's determinations of a f act or circumstance-for example "scope of employment" is dispositive of a court controversy, federal courts generally do not hold the determination unreviewable. Instead, federal judges traditionally proceed from a the "strong presumption that Congress intends

judicial review.” **Bowen V. Michigan Academy of Family Physicians**, 476 U. S. 667, 6770 (1986)

The Plaintiff avers that the government has submitted neither trustworthy testamentary evidence nor documentary evidence backing up its claims of an employer-employee relationship with Defendants Freeman and Budget Rent A Car, Inc. Thus, this matter on the personal actions of Defendants Freeman and Budget Rent A Car to be returned to the State Court for resolution and the form 95 claim on the employer-employee action is to be allowed to exhaust administrative remedies. Aught to say none of the affiants were present and can not reasonable be deemed to offer any statements of whether the Defendant Freeman was within the line and scope of her duties at the time she drove her car into the back of the Plaintiff causing personal injuries. Additionally the dismissal of the personal action against Defendant, Budget Rent A Car, Inc. would disarm Plaintiff's rights and cause a demise of that action as the State statue of limitation run on August 26, 2005.

The Plaintiff avers that the government is attempting to have the service issue both ways by demanding a dismissal for lack of service. The State court action shows a service attempt on Defendant Freeman in the State of Arizona in September 0f 2005 with a return “vacant”: The government did not insert its position in this matter until months later on February 24, 2006 via a Removal Motion with a hearsay Certification on Scope of Employment by the Attorney General. Thus, this matter has been before this Honorable Court for a period of approximately one month and a half with the government having now filed a dismissal motion. The Plaintiff submits that the government is attempting to have it both ways by inserting the Removal Motion and then claiming that

it is exempt from the liability of the Defendant Freeman who drove her car into the back of the car being lawfully driven by the Plaintiff with Defendant Freeman's explanation that "she was looking at buildings." Plaintiff submits that until a review by this Honorable Court on the trustworthy allegations of the Removal of this matter from State Court that the Plaintiff can not reasonable be in a position in proceed with the prosecution of this matter.

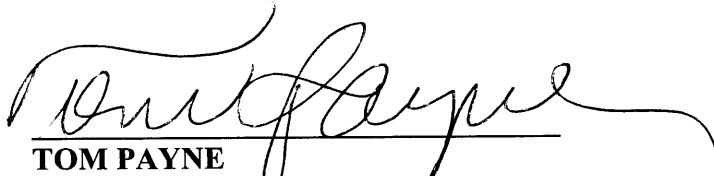
The Plaintiff submits that the government's Motion to Dismiss should be denied and the matter restored to the State Court Docket where the matter was headed to mediation by Court Order. The Plaintiff submits that if the government can evidentially and procedurally proved by trustworthy sufficient legal evidence that there is an employer-employee relationship with the Defendant Freeman at the time she negligently drove her car into the back of the Plaintiff's care then in that event the timely filed form 95 against the Air Force should be allowed to proceed through administrative channels to a final solution.

Father the Plaintiff submits that there is the application of 28 U. S. C. 2679 (5) sets forth the applicable rule in that if the form 95 "**claim would have been timely had it been filed on the date the underlying civil action commenced, and the claim is presented to the appropriate Federal Agency within 60 days after the dismissal of the Civil action.**" This cause of action is subsequently different from any personal liabilities that Defendant Freeman has outside any federal protection. The Plaintiff submits that even employee of the Federal government can be liable for their personal action which wrongfully causes injuries to a person.

The Plaintiff submits that the matter of the Defendant, Budget Rent A Car, Inc. is to be remanded to the State Court as the government has made no employer-employee assertion on behalf of that Defendant.

The Plaintiff respectfully prays for an Order Denying the government's Motion to Dismiss on the subject cause.

Respectfully submitted this the 11th day of April 2006.



TOM PAYNE
ATTORNEY FOR PLAINTIFF

Shaded Areas To Be Used By Data Processing Only

Sheet 1 of 1

Microfilm No

DATA PROCESSED

Accident No

06622

Date	08/26/2003	Time	1710	AM/PM	M	Day of Week	W	County	03	City	Montgomery	Highway Classification	1-Interstate 2-Other	Local Zone	07
On Street, Road or Highway	CARMICHAEL RD CARMICHAEL CT. TRINITY BLVD														
Intersection Related	1-Node 1 2-Node 2														
First Harmful Event	20														
Event Location	1														
Distance to Fixed Object	NA FT.														
No. of Vehicles	2														
No. Pedestrians	0														
No. Injured	0														
No. Fatalities	0														
Unit 1 Type	27														
Unit 2 Type	1														

Driver Full Name	REJEANA U. FREEMAN														
Street Address	1628 MOHAVE BLVD														
City and State	AZ														
ZIP	85307														
Telephone No	5352784														
DL Class	D														
DL Status	C														
List Restrictions	Not Complied With														
CDL Status	N														
List Endorsements	Not Complied With														
Residence Less Than 25 Miles	Yes														
Place of Employment	USAF - LUKE AIR FORCE BASE - AZ														
Liability Insurance Co.	BUDGET - SELF														
Social Security No	351545215														
Driver's License No.	D 00981070														
DL State	AZ														
DL Class	D														
DL Status	C														
Type Test	No Test														
1- Blood Test	3- Urine Test														
2- Breath Test	4- Unable to Administer														
5- Refused Test	Test Results														
6- Other	NA														
Maneuver	1														
Travel Road Name	CARMICHAEL RD														
Road Code	NA														
Travel Direction	N/E S W A-Not on Rd U-Unknown														
Other Contr Circumstance	20														
Prime Harm Event	1														
Event Loc	1														
Veh Year	2003														
Make	FORD														
Model	TAU														
Body	4-D														
V.I.N.	1FAEP55U03A272048														
License Tag Number	W46 HSH														
State	FL														
Year	2004														
Owner's Name	BUDGET RENT A CAR														
Street or R.F.D.	3470 SECTIA HWY														
City	MONTGOMERY														
State	AZ														
ZIP	85308														
Type	1- Auto														
Usage	1- Personal														
Hazardous Cargo	1- None														
Attachment	1- None														
Contributing Defect	1- Brakes														
Circle areas Damaged On Diagram	10 Under Carriage														
Speed Limit	35 MPH														
Est. Speed	20 MPH														
Citation Offense Charged	NONE														
Damage Severity	1- None Visible														
Vehicle Towed By Whom	NA														
To Where	NA														

Driver/Full Name	SHARON LEA MANNING														
Street Address	1617 QUEEN ELIZABETH CT.														
City and State	Montgomery, AL														
ZIP	36117														
Telephone No	2603700														
DL Class	D														
DL Status	C														
List Restrictions	Not Complied With														
CDL Status	N														
List Endorsements	Not Complied With														
Residence Less Than 25 Miles	Yes														
Place of Employment	MONTGOMERY ADVERTISER														
Liability Insurance Co.	GEICO														
Social Security No	416088290														
Driver's License No.	4939227														
DL State	AL														
DL Class	D														
DL Status	C														
Type Test	No Test														
1- Blood Test	3- Urine Test														
2- Breath Test	4- Unable to Administer														
5- Refused Test	Test Results														
6- Other	NA														
Maneuver/Action	1-9														
Travel Road Name	CARMICHAEL RD														
Road Code	NA														
Travel Direction	N/E S W A-Not on Rd U-Unknown														
Other Contr Circumstance	20														
Prime Harm Event	1														
Event Loc	1														
Veh Year	1993														
Make	JUNFI														
Model	5304-D														
Body	4-D														
V.I.N.	JUNFI 2100 PM 032345														
License Tag Number	3A8325K														
State	AL														
Year	2004														
Owner's Name	Same														
Street or R.F.D.	NA														
City	NA														
State	NA														
ZIP	NA														
Type	1- Auto														
Usage	1- Personal														
Hazardous Cargo	1- None														
Attachment	1- None														
Contributing Defect	1- Brakes														
Circle areas Damaged On Diagram	10 Under Carriage														
Speed Limit	35 MPH														
Est. Speed	000 MPH														
Citation Offense Charged	No Proof of Ins.														
Damage Severity	1- None Visible														
Vehicle Towed By Whom	NA														
To Where	NA														

Contributing Circumstances	1- Improper Passing														
Driver Maneuver	1- Go Straight Ahead														
Pedestrian Action	1- Cross/Enter-Intersection														
Event Loc	1- On Roadway														

Date 8-26-2023